

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0382V

UNPUBLISHED

MICHAEL TERRY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 30, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for petitioner.

Ida Nassar, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On March 13, 2019, Michael Terry filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered Guillain Barré Syndrome (GBS) as a result of an influenza (“flu”) vaccine administered to him on November 2, 2017. Petition at 1. Petitioner further alleges that his symptoms began between three and forty-days of the vaccination and lasted for more than six months. *Id.* The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 31, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. ECF 31. On October 29, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$200,000.00 in actual pain and suffering. Proffer at 1. In the Proffer, Respondent represented that

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$200,000.00 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

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|-------------------------------|---|-------------------------------|
| MICHAEL TERRY, |) | |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | No. 19-382V |
| v. |) | Chief Special Master Corcoran |
| |) | ECF |
| SECRETARY OF HEALTH AND HUMAN |) | |
| SERVICES, |) | |
| |) | |
| Respondent. |) | |
| |) | |

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On March 13, 2019, Michael Terry (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered Guillain Barre Syndrome (“GBS”) as a result of an influenza (“flu”) vaccine administered to him on November 2, 2017. Petition at 1. On July 31, 2020, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act, and the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation the same day. ECF No. 30; ECF No. 31.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that Michael Terry should be awarded \$200,000.00 in actual pain and suffering. Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to Michael Terry should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$200,000.00 representing compensation for pain and suffering in the form of a check payable to petitioner, Michael Terry.

III. Summary of Recommended Payments Following Judgment

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|--|---------------------|
| Lump sum payable to petitioner, Michael Terry: | \$200,000.00 |
|--|---------------------|

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ Ida Nassar
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DATED: October 29, 2020